



JUDICIAL INVESTIGATION COMMISSION

Post Office Box 1629
Charleston, West Virginia 25326-1629
(304) 558-0169 • FAX (304) 558-0831

June 5, 2003

Re: JIC Advisory Opinion 2003-09

Dear

In a recent letter you requested an advisory opinion. You stated in that correspondence that it may become necessary for your homeowner's association to file suit against your new next door neighbor under the subdivision's covenants and restrictions to remove a large shed of at least 36 feet in length. A letter has been sent to the neighbor by the president of the homeowner's association setting forth opposition to the placement of the shed. After the letter was sent, you found out that your name was included as having expressed displeasure with the structure and officially requesting it be removed. You expect that you will be called as a witness if a suit is filed and the case goes to trial. You asked whether you would be conflicted out of sitting in any matters involving the attorney retained by the homeowner's association while the matter is pending, and for some period of time thereafter. You also asked what affect the situation would have on you sitting in the cases of other members of the firm of the attorney retained by the homeowner's association during the pendency of the matter, and for any period of time thereafter.

Your request was reviewed by the Commission at its recent meeting. To address the questions which you have raised, the Commission reviewed Canon 3 of the Code of Judicial Conduct which states in relevant part:

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. . .

June 5, 2003

Page Two

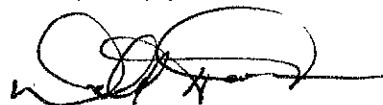
The commentary under this section of Canon 3 states that "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

Based upon the information which you have provided and a review of the relevant sections of Canon 3E, it is the opinion of the Commission that you should not sit on any matters involving the attorney retained by your homeowner's association as long as the matter is pending. You should also disqualify yourself on any cases involving that attorney for a six-month period after the matter is resolved. For an additional six months you should disclose the representation that was made by the attorney, but you would not be disqualified automatically from hearing any of the attorney's cases.

You should also disclose the representation of the homeowner's association by the attorney when other members of his firm appear before you while the matter is pending. This disclosure should be continued for a six-month period after the matter is resolved. There would be no automatic disqualification on your part when other members of the firm of the attorney appear before you so long as they are not involved in any manner in the representation of the homeowner's association.

It is hoped that this opinion fully addressed the concerns which you have raised. If you have any further question regarding this matter do not hesitate to contact the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Donald H. Cookman', with a stylized flourish at the end.

Donald H. Cookman, Chairperson
Judicial Investigation Commission

DHC:nb